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ALEXANDER L. STEVAS,

No. 84-342

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

FIRESIDE CHRYSLER-PLYMOUTH, MAZDA, INC., *et al.*,
Appellants,

vs.

JIM EDGAR, Secretary of the State of Illinois, *et al.*,
Appellees,

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

APPELLANTS' REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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Appellant corporations have no parent companies, subsidiaries, or affiliates.

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ARGUMENT

The issue presented in this appeal is whether a legitimate legislative purpose is served by a state statute whose declared aim is to restrain trade in order that certain influential competitors might benefit financially. Nothing in appellees' Motion to Dismiss or Affirm ("Motion") alters the nature of the issue, or suggests that the statute's patently improper exercise of governmental power in fact serves a legitimate public interest. The Illinois statute thus fails to satisfy the requirements of the Due Process and Equal Protection Clauses and is unconstitutional.

Appellees' Motion is most notable in its failure to confront the key constitutional deficiencies which warrant reversal of the Illinois judgment before the Court on appeal. Nowhere, for

example, do appellees discuss the requirement that legislation, the effect of which is to restrain competitive activity, must serve a legitimate purpose in order to be constitutional. Indeed, their abbreviated discussion of the constitutional standard suggests that the legitimacy of a state's purpose in enacting legislation is not even a question subject to judicial review. *See* Motion at 8. So restrictive a view of the Court's enforcement of the Due Process and Equal Protection Clauses is inaccurate. *See, e.g., Zobel* v. *Williams,* 457 U.S. 55 (1982). *See also* Jurisdictional Statement at 9-12. Even in the economic arena, the exercise of state legislative power is limited to purposes which are both legitimate and public. It is only upon the articulation of such a valid state aim that the constitutionality of a state statute can be upheld.[1]

Appellees' Motion also fails to confront the affirmatively improper purpose which is the declared aim of the Illinois statute. As a preliminary matter, appellees agree that the constitutionality of the statute must be judged in light of the legislative purposes set forth in Governor Thompson's July 13, 1982 message to the legislature. *See* App. I. As it is not necessary in this case for the Court to "speculate" as to the statute's aims, Motion at 4, the Court's constitutional inquiry is narrowed to and focused upon the blatantly anticompetitive purposes which were the source of such obvious concern to the Governor.[2]

The statute's affirmatively illegitimate goal of restraining trade receives only a brief footnote reference in which appellees

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[1] *County Board* v. *Richards,* 434 U.S. 5 (1977), cited by appellees in support of their novel theory of constitutional review, is itself a case in which the constitutionality of a regulation was upheld only after its purpose was expressly found legitimate by both the state supreme court and this Court. *Id.* at 6-7.

[2] Appellees' systematic mischaracterization of the Governor's statement, although unnecessary to their argument, warrants clarification. Far from finding the statute "indeed necessary", Motion at 6, Governor Thompson expressed his concerns about the statute while choosing to "defer" to the judgment of the legislature. *See* App. I at I-2. Moreover, appellees' curious discussion of the Governor's doubts as to the constitutionality of the statute is speculation finding no support in the record. *See* Motion at 6 n.5.

state that they "fail to see the relevance of appellants' suggestion that the statute is anticompetitive." Motion at 5-6 n.4. The relevance, of course, lies in the fact that restraint of trade, without even the assertion of a valid public interest, is the Illinois statute's sole reason for being and is an illegitimate state purpose. *See* Jurisdictional Statement at 9. Appellees do not dispute that constitutional judgment, but assert only that as to the Illinois statute the lower courts "found no conflict with any other state policy nor was it ever seriously contended in the courts below that the statute contravened any federal policy." Motion at 6 n.4. It is true that the Illinois Supreme Court's majority failed to consider the purposes of the statute and whether those purposes are consistent with other state and federal policy norms. But that can hardly be a source of comfort to appellees. Instead, the court's failure to determine what the statute's purposes were and whether or not they were legitimate only dramatizes the patent inadequacy of the opinion now on appeal.[3]

The bulk of appellees' argument on the merits is aimed at describing the economic downturn which purportedly prompted the restraint of trade.[4] Whether motivated by a temporary decline in sales or by some other factor, however, the illegitimacy of the legislative purpose remains the same.[5] A state may not constitutionally eliminate competition in order that those who do not want to compete may be protected by the

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[3] The minority addressed the statute's anticompetitive aims directly, concluding that they were inconsistent with settled state and federal policy judgments and thus improper. *See* App. A at A-15.

[4] Although relying upon the case in their briefs before the Illinois Supreme Court, appellees now characterize as "irrelevant" *McGowan* v. *Maryland*, 366 U.S. 420 (1961), and other cases in which the creation of a general day of rest has been found to constitute a legitimate state interest. *See* Motion at 5 n.4. The constitutional analysis embodied in *McGowan* and its progeny, however, demonstrates that Sunday closing laws limited to a single trade are presumptively invalid. *See* Jurisdictional Statement at 13-14.

[5] Aside from its irrelevance, appellees' belated attempt to document their claims, *see* Motion at 5 n.4, was not presented to either of the courts below and is not in the record on appeal. The record in the courts below does, however, contain documentation of the dramatic increase in automobile sales beginning in the first half of 1983. *See, e.g.*, App. A at A-13.

state from the consequences. Appellees in this Court say nothing to dispute, in the words of the Illinois Supreme Court minority, "what the Secretary of State appears to admit is the real reason for the Sunday closing law in this case, to increase the profitability of the automobile sales business by decreasing competition and reducing the availability of its product." *Fireside Chrysler-Plymouth, Mazda, Inc.* v. *Edgar,* App. A at A-15 (Opinion of Justices Simon and Underwood). No valid public interest has been asserted in support of the Illinois statute and the act should accordingly be found unconstitutional.

With no legitimate public purpose served by the Illinois statute, appellees attempt to borrow strength from other statutes whose constitutionality was upheld by state courts in opinions predating *McGowan* v. *Maryland.* *See* Motion at 6-8. Whether or not those other statutes were enacted to serve a legitimate state purpose, however, has no bearing on the question before this Court. Indeed, having sought to justify the statutory inhibition of competitive activity on the basis of an economic downturn which occurred in the early 1980's, appellees can hardly rely upon different legislative purposes formulated in other jurisdictions more than twenty years before.

Appellees also seek shelter from review in the assertion that this Court is bound by the Illinois Supreme Court's "determination" that the Sunday closing law was one of a number of state regulations specifically directed toward automobile dealers. *See* Motion at 9. Even if that assertion is so, the *constitutionality* of the state statute is not a question foreclosed by the state court's finding. *See Missouri* v. *Hunter,* 459 U.S. 359, 368 (1983). Equally important, the existence of other Illinois statutes relating to automobile dealers is irrelevant to the constitutional issue presented in this case. The fact that dealers are properly regulated for some purposes does not mean that regulation of them for *any* purpose is legitimate *per*

se. Only the Sunday closing statute is before the Court on appeal, and unless it serves a legitimate state purpose that statute must be found unconstitutional.

Respectfully submitted,

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